

In the Matter of Merchant Mariner's Document No. Z-432805-D2 and all other Licenses and Certificates

Issued to: VIRGIL EDWARD MCCOY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

930

VIRGIL EDWARD MCCOY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 30 June 1956, an Examiner of the United States Coast Guard at Corpus Christi, Texas, suspended Merchant Mariner's Document No. Z-432805-D2 issued to Virgil Edward McCoy upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a fireman-watertender on board the American SS STONY CREEK under authority of the document above described, on or about 28 June 1956, while said vessel was in the port of Corpus Christi, Texas, he failed to obey a lawful order of the night engineer to leave the engine room; he attempted to kick the night engineer and cursed him; he attempted to urinate on the night engineer.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the night engineer, the testimony of the night mate and two exhibits.

In defense, Appellant offered in evidence his sworn testimony and that of the fireman-watertender Tiflis who was on watch at the time of the alleged incidents. Appellant indicated that he did not remember whether he cursed the night engineer or attempted to urinate on him. Appellant stated that he might have kicked at the night engineer in self-defense after the latter had hit Appellant with the wrench while he was on the ladder.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-432805-D2,

and all licenses and certificates issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - two months outright suspension and four months suspension on probation until eighteen months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 28 June 1956, Appellant was serving as a fireman-watertender on board the American SS STONY CREEK and acting under authority of his Merchant Mariner's Document No. Z-432805-D2 while the ship was in the port of Corpus Christi, Texas.

At approximately 1830 on this date, Appellant went below to the engine room in an intoxicated condition. The night engineer and night mate were in the engine room. Appellant cursed the night engineer and directed vulgar language toward him. When the night engineer went to the adjoining fireroom, Appellant left the engine room. The night engineer went topside to obtain assistance in removing Appellant from the ship. Shortly after the night engineer was back in the engine room, Appellant returned and stated that he intended to "kill" the operating plant when he came on watch at 2000. The night engineer told Appellant to leave the engine room and he went into the fireroom to talk with fireman-watertender Tiflis who was on watch. The night engineer followed Appellant and told Tiflis not to let Appellant relieve the watch because of his intoxicated condition. Appellant went up to the grating above the floor plates in the fireroom and attempted to urinate on the night engineer.

At 1955, Appellant was again returning to the engine room by means of a ladder. The night engineer picked up a ten-inch long Stillson wrench and ordered Appellant not to continue down the ladder into the engine room. Appellant proceeded down the ladder and kicked at the night engineer. The latter grabbed Appellant's foot and hit him on the shin with the Stillson wrench in order to keep Appellant away from the switchboard. The night engineer then shoved Appellant against a generator and held him there until the police arrived. They removed Appellant from the ship.

Appellant has had no prior record during thirteen years at sea.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant requests that the hearing be reopened and his witness Tiflis questioned so that the true facts can be made known. Tiflis did not understand the question as to Appellant's position at the time of the alleged assault. If Tiflis had understood, he would have testified that Appellant was on the ladder where he was not in a position to kick at the night engineer.

OPINION

The Examiner accepted the testimony of the night engineer as representing the true facts. The engineer's testimony is partially corroborated by the testimony of the night mate and fireman-watertender Tiflis. Although Tiflis states that he did not see Appellant attempt to kick the night engineer before he hit Appellant with the wrench, Tiflis might not have been in a position to see Appellant at all times since Tiflis was standing in the doorway between the fireroom and engine room. Tiflis did not affirmatively state that Appellant did not attempt to kick the engineer before he hit Appellant with the wrench. I agree with the Examiner's acceptance of the version presented by the night engineer.

Appellant admitted that he had been drinking and that his memory was hazy with respect to some of the material facts. His firm denial that he kicked at the night engineer before being struck with the wrench and his positive assertion that he was still on the ladder when struck are somewhat inconsistent with his failure to remember clearly some of the other events. Both the night engineer and Appellant's witness definitely stated that appellant had stepped off the ladder and was on the floor plates before he was struck with the wrench. there is no reason to reject such testimony. Nevertheless, the point is immaterial since Appellant could have kicked at the night engineer, standing at the bottom of the ladder, while Appellant was still several feet above the floor plates. There is no reason to grant Appellant's request to reopen the hearing.

The order imposed by the Examiner is considered to be lenient despite Appellant's prior clear record.

The order of the Examiner dated at Corpus Christi, Texas, on 30 June 1956 is ~~is~~ **AFFIRMED.**

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 5th day of November, 1956.